



13.12.2021

# NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

**Subject: Reasoned opinion of Seanad Éireann on the proposal for a regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council (COM(2021)0559 – C9-0331/2021 – 2021/0223(COD))**

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

Seanad Éireann has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

04.11.2021

Cathaoirleach Sheanad Éireann

Chair of the Senate of Ireland

Mr David Sassoli MEP,  
President,  
European Parliament,  
Rue Wiertz 60,  
1047 Bruxelles,  
Belgium.

**Re: Reasoned opinion of Seanad Éireann on COM(2021)552, 556, 559, 561, 562 and 567**

Dear President Sassoli,

I am writing to inform you that Seanad Éireann has considered the following six proposals:

- Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure, COM (2021)552
- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/631 as regards strengthening the CO2 emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition, COM(2021)556
- Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council, COM(2021)559
- Proposal for a Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable airtransport, COM(2021)561
- Proposal for a Regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC, COM(2021)562
- Proposal for a Decision of the European Parliament and of the Council amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union, COM(2021)567

Seanad Éireann is of the opinion that these proposals do not comply with the principle of

subsidiarity.

Under Standing Orders of Seanad Éireann, a Joint Committee was conferred with the power to consider the above proposals for compliance with subsidiarity. The Committee was obliged under Standing Orders to report back to Seanad Éireann if it was of the opinion that the proposals did not comply with the principle of subsidiarity. The Committee duly reported to the Seanad and a motion on the Report of the Committee was considered and adopted.

In accordance with Standing Orders, I have enclosed a copy of the Resolution of Seanad Éireann and a copy of the Report of the Committee with the Reasoned Opinion.

Yours sincerely,

Senator Joe O'Reilly,  
LeasChathaoirleach,  
Seanad Éireann.

2<sup>nd</sup> November, 2021.

CC:

President of the European Commission, Dr Ursula von der Leyen.

President of the Council of the European Union, c/o Secretary General Jeppe Tranholm-Mikkelsen.

That Seanad Éireann:

(1) notes the agreed Report of the Joint Committee on Transport and Communications under Standing Order 116 on the following six proposals:

- Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economywide emission reduction target and appropriately implementing a global market-based measure, COM(2021)552;

- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/631 as regards strengthening the CO2 emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition, COM(2021)556;

- Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council, COM(2021)559;

- Proposal for a Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport, COM(2021)561;

- Proposal for a Regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC, COM(2021)562; and

Proposal for a Decision of the European Parliament and of the Council amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union, COM(2021)567;

which was laid before Seanad Éireann on 26th October, 2021, in accordance with Standing Order 116(3)(6);

(2) having regard to the aforementioned Report, and in exercise of its functions under section 7(3) of the European Union Act 2009, is of the opinion that the proposals COM(2021)552, 556, 559, 561 562 and 567 do not comply with the principle of subsidiarity for the reasons set out in section 3 of the Report; and

(3) notes that, pursuant to Standing Order 116(4), a copy of this Resolution together with the reasoned opinion and the aforementioned Report shall be sent to the Presidents of the European Parliament, the Council and the Commission.”

## 1. Introduction

1. The principle of subsidiarity is defined in Article 5(3) of the Treaty on European Union (TEU) as follows:

*“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.*

Article 5(3) also gives specific responsibility to national parliaments to ensure that EU institutions apply the principle in accordance with Protocol 2 on the application of the principles of subsidiarity and proportionality.

2. The test established by Article 5(3) TEU is, in effect, a “comparative efficiency” exercise, involving a “*necessity* test and a “*greater benefits* test:
  - i. *Necessity*- Is action by the EU necessary to achieve the objective of the proposal? Can the objective of the proposal only be achieved, or achieved to a sufficient extent, by EU action?
  - ii. *Greater Benefits* - Would the objective be better achieved at EU level - i.e. would EU action provide greater benefits than action at Member States level?
3. To assist national parliaments in their evaluation of subsidiarity compliance, Article 5 of Protocol 2 provides explicitly that

*“ Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality This statement should contain some assessment of the proposal’s financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States... ”*

4. Therefore, any new draft legislative act:
  - i. must be supported by a sufficiently ‘detailed statement’ to allow a judgment to be made by national parliaments on its compliance with the principle of subsidiarity;
  - ii. must clearly satisfy both the *necessity* and *greater benefit* tests; and
  - iii. must, under the principle of conferral set down in Article 5(2) of the TEU,
  - iv. show that the Union is acting *‘only within the limits of the competences*

*conferred upon it by the Member States in the Treaties to attain the objectives set out therein. ’*

## **2. Scrutiny of the Joint Committee on Transport and Communications**

5. The Joint Committee on Transport and Communications (hereafter referred to as the “Committee”) scrutinised the following six proposals at two meetings, on 13 October 2021 and 21 October 2021

- COM(2021 )552: Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation’s contribution to the Union’s economy-wide emission reduction target and appropriately implementing a global market-based measure
- COM(2021 )556: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/631 as regards strengthening the CO<sub>2</sub> emission performance standards for new passenger cars and new light commercial vehicles in line with the Union’s increased climate ambition
- COM(2021 )559: Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council
- COM(2021 )561: Proposal for a Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport
- COM(2021 )562: Proposal for a Regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC
- COM(2021 )567: Proposal for a Decision of the European Parliament and of the Council amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union

6. Following the Committee’s consideration of these matters, it agreed a reasoned opinion on the proposals listed above at its meeting on the 21 October 2021.

## **3. Opinion of the Joint Committee**

7. The Committee has had specific regard to the Treaty provisions and is of the opinion

that these proposals do not comply with the principles of subsidiarity. The reasons are set out in the following paragraph:

8. The Committee is of the opinion that the European Commission has not adequately met the procedural requirements (in Protocol 2, Article 5) to provide a detailed statement with sufficient quantitative and qualitative indicators, to allow national parliaments to fully assess all the implications of EU-wide proposals of this nature.

#### **Recommendations of the Joint Committee**

9. The Committee agreed this Report under Dáil Standing Order 133 and Seanad Standing Order 116 on 21 October 2021.
10. The Committee, pursuant to Standing Orders, recommends the Reasoned Opinion contained in section 3 above for agreement by Dáil and Seanad Éireann.

Kieran O'Donnell TD Cathaoirleach 21 October 2021